# HON'BLE SRI JUSTICE GHULAM MOHAMMED

**CMA No.871 of 2006**

JUDGMENT:

This appeal is filed against the common order dated 19.09.2005 passed in O.P.No.322 of 2002 and OP No.323 of 2002 by the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad.

2. The OP was filed by the claimants/appellants herein seeking compensation of Rs.7,00,000/- for the death of one Koteswar alias Kotaiah, in the Motor Accident that occurred on 31.07.2001 involving oil tanker lorry bearing registration No.AP 16T 4978.

3. The facts stated are:- On the fateful day, the deceased and another person by name Abbaiah at about 8.15 PM were walking on the extreme left side of the road side by side, at that time, the oil tanker in question came in high speed in rash and negligent manner from Jangaon towards Bachannapet and dashed against the said persons due to which they sustained injuries, that the deceased Kotaiah sustained fractures on right foot, left foot, stomach and other injuries and was immediately shifted to MGM hospital, Warangal, and thereafter to CDR hospital, Hyderguda, Hyderabad, and he died while undergoing treatment on 18-1-2002. It was stated that as on date of the accident, the deceased was aged 25 years and was earning Rs.4000/- per month by driving auto, that he was the bread-winner of the family and therefore the claimants made a claim for Rs.7,00,000/-. To prove the claim, the wife of the deceased was examined as PW.1 besides, three other witnesses and got marked Exs.A-1 to A-18. Ex.A-1 is the copy of First Information Report, Ex.A-2 is the copy of Charge-sheet, Ex.A-9 is the copy of Inquest Report, Ex.A-10 is the copy of Post-

mortem report, Ex.A-11 is the Motor Vehicle Inspector's Report, The Tribunal considering the oral and documentary evidence adduced with regard to the culpability in causing the accident, held that the driver of the oil tanker lorry in question was at fault in causing the accident and accordingly as against the claim of Rs.7,00,000/-, granted compensation of Rs.5,66,000/-. Dissatisfied with the same, the claimants filed this appeal.

4. Heard learned counsel for the claimants and learned counsel for the respondent. Perused the impugned order passed by the Tribunal.

5. To prove the accident, PW.3 – eye-witness was examined. He categorically stated the manner in which the accident occurred and the deceased and another person by name Abbaiah sustaining injuries in the said accident. The police after investigation, filed charge sheet Ex.A-2, held that the accident occurred due to the rash and negligent driving of the driver of the oil tanker in question. Since the evidence of the witnesses examined remained un-contradicted and also in the light of the Exs.A-1 to A-18, finding of the Tribunal in fixing the culpability on the part of the driver of the oil tanker lorry in question cannot be interfered with by this Court.

6. Coming to the question of adequacy or otherwise of the compensation granted by the Tribunal, it has come in the evidence that the claimant was auto driver and earning sum of Rs.4,000/- per month and was aged 25 years as on date of his death, and therefore, considering his age, even in the absence of proof of income, his income can be safely fixed at Rs.3,000/- per month, which annually comes to Rs.36,000/- and from this amount 1/3$^{rd}$ is to be deducted towards his personal expenses which comes to Rs.24,000/- (36,000 – 12,000). The appropriate multiplier applicable as per

the decision of the Hon'ble Supreme Court reported in ***SARALA VERMA VS. DELHI TRANSPORT CORPORATION***[1] is '18' and if the same is applied, the loss of dependency comes to Rs.4,32,000/-. It is to be noticed that the deceased was in CDR hospital from 6-8-2001 and he was there upto 28-8-2001 as inpatient and thereafter it is stated that the deceased got discharged as he could not undergo further treatment. The deceased succumbed to the injuries on 18-1-2002. As per Ex.A-12 the claimants incurred an amount of Rs.1,40,660/- towards medical expenses and this fact is confirmed by PW-4 medical officer. Hence, the claimants are entitled to the amounts of Rs.1,40,660/- incurred towards medical expenses plus an amount of Rs.20,000/- under the two conventional heads i.e. loss of consortium and loss of estate, totalling to Rs.5,92,660/- rounded off to Rs.5,93,000/-. However, the rate of interests granted by the Tribunal at 9% per annum is reduced to 6% per annum from the date of petition till the date of payment in the light of the decision of the Hon'ble Supreme Court in ***Sarla Verma's*** case cited supra.

7. In the result, the impugned award is modified accordingly and the appeal is allowed in part. No order as to costs.

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*GHULAM MOHAMMED, J*

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[1] 2009 (6) scale 129